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091144Z Feb 01

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ACTION AF-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	ACQ-00	CIAE-00	INL-00
	DINT-00	DODE-00	DOTE-00	SRPP-00	DS-00	EB-00	EUR-00
	FAAE-00	FBIE-00	VC-00	H-01	TEDE-00	INR-00	IO-00
	L-00	VCE-00	AC-01	NSAE-00	OIC-02	OMB-01	OPIC-01
	PA-00	PM-00	PRS-00	ACE-00	P-00	SP-00	IRM-00
	SSO-00	STR-00	TRSE-00	USIE-00	R-00	PMB-00	DSCC-00
	PRM-01	DRL-02	G-00	NFAT-00	SAS-00	SWCI-00	/009W

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FM AMEMBASSY HARARE
TO SECSTATE WASHDC IMMEDIATE 8200
INFO NSC WASHDC IMMEDIATE
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L SECTION 01 OF 02 HARARE 000694

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JENDAYI FRAZER
LONDON FOR GURNEY
PARIS FOR WILLIAMS
NAIROBI FOR PFLAUMER

PASS USAID FOR AFR/SA C. PALMA

PASS USTR FOR ROSA WHITAKER

E.O. 12958: DECL. 02/09/11
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TAGS: [PGOV](#) [PHUM](#) [PINS](#) [PINR](#) [ZI](#)
SUBJECT: ANOTHER SUPREME COURT JUSTICE IS SHOWN THE DOOR

REF: HARARE 644

CLASSIFIED BY CHARGE D'AFFAIRES EARL IRVING. REASONS: 1.5
(B) AND (D).

SUMMARY

1. (C) AFTER FORCING SUPREME COURT CHIEF JUSTICE ANTHONY GUBBAY INTO EARLY RETIREMENT ON FEBRUARY 2 (REFTTEL), THE GOVERNMENT HAS NOW TURNED ITS ATTENTION TO GUBBAY'S FOUR COLLEAGUES ON ZIMBABWE'S HIGHEST BENCH. ON FEBRUARY 9, JUSTICE MINISTER PATRICK CHINAMASA ASKED FOR THE RESIGNATION OF JUSTICE NICHOLAS MCNALLY AND WAS EXPECTED TO MAKE THE SAME DEMAND LATER IN THE DAY OF JUSTICE AHMED IBRAHIM. MCNALLY, WHO REACHES THE MANDATORY RETIREMENT AGE OF 70 IN DECEMBER OF THIS YEAR, IS INCLINED TO SUBMIT HIS RESIGNATION, CONVINCED THAT THE ONLY ALTERNATIVE IS FURTHER INTIMIDATION AND LIKELY PHYSICAL HARM BY THE GOVERNMENT'S SO-CALLED WAR VETERANS AND SUSPENSION OF HIS PENSION. END SUMMARY.

GO, OR ELSE

2. (C) ZIMBABWEAN SUPREME COURT JUSTICE NICHOLAS MCNALLY (PROTECT) TOLD POLITICAL SECTION CHIEF ON FEBRUARY 9 THAT JUSTICE MINISTER PATRICK CHINAMASA HAD ASKED HIM EARLIER
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THAT DAY TO SUBMIT HIS RESIGNATION, EVEN THOUGH HE DOES NOT REACH THE MANDATORY RETIREMENT AGE OF 70 UNTIL DECEMBER OF THIS YEAR. ASKED WHAT WOULD HAPPEN IF HE REFUSED, CHINAMASA SAID THE PRESIDENT DID NOT WANT MCNALLY TO GET HURT, BUT, IF HE DECLINED TO COMPLY WITH THE GOVERNMENT'S REQUEST, "THERE WILL BE AN UGLY CONFRONTATION."

3. (C) THE JUSTICE TOLD POLCHIEF HE IS INCLINED TO GIVE IN TO CHINAMASA'S ULTIMATUM. ALTHOUGH MCNALLY WOULD FEEL TERRIBLE ABOUT "DESERTING" ZIMBABWEANS WHO RELY ON THE JUDICIARY TO BE AN EFFECTIVE CHECK ON THE EXECUTIVE, PARTICULARLY DURING THESE DIFFICULT TIMES, HE FELT AS THOUGH HE HAS LITTLE CHOICE. THE JUSTICE IS CONVINCED THAT, IF HE WERE TO CHOOSE TO STAY ON, THE SO-CALLED WAR VETERANS WOULD BE DIRECTED TO INTENSIFY THEIR INTIMIDATION OF HIM AND LIKELY WOULD SEEK TO DO PHYSICAL HARM TO HIM OR HIS FAMILY. IN ADDITION, MCNALLY SAID HE WILL BE DEPENDENT UPON HIS PENSION ONCE HE RETIRES, AND FEARS THAT THE GOVERNMENT MIGHT SIMPLY SUSPEND PAYMENT OF IT. BESIDES, THE GOVERNMENT HAS MADE CLEAR ITS DETERMINATION TO CONTINUE TO IGNORE JUDICIAL RULINGS AND HAS NOW STOPPED

BOTHERING EVEN TO APPEAR IN COURT TO ANSWER CLAIMS FROM FARMERS AND MEMBERS OF THE OPPOSITION. A FURTHER CONSIDERATION IS THAT MCNALLY COULD NOT COUNTENANCE WORKING FOR GODFREY CHIDYAUSIKU, THE LIKELY CANDIDATE TO REPLACE ANTHONY GUBBAY AS CHIEF JUSTICE. THE NORMALLY RESERVED MCNALLY CALLED THE PRO-ZANU-PF CHIDYAUSIKU A "SLIMY BASTARD." CHINAMASA REPORTEDLY IS EYEING THE CHIEF JUSTICE POSITION HIMSELF, BUT MCNALLY THOUGHT CHIDYAUSIKU WAS THE ODDS-ON FAVORITE.

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14. (C) MCNALLY SAID CHINAMASA WOULD BE MEETING LATER IN THE DAY WITH HIS COLLEAGUE, JUSTICE AHMED IBRAHIM, AND WOULD DEMAND HIS IMMEDIATE RESIGNATION AS WELL. IBRAHIM IS ONLY 63, BUT MCNALLY THOUGHT HE WOULD BE INCLINED TO COMPLY WITH CHINAMASA'S DEMAND. WHAT REMAINS UNCLEAR, MCNALLY OFFERED, IS WHETHER THE GOVERNMENT WOULD DEMAND THE DEPARTURE OF THE COURT'S TWO BLACK JUSTICES, AND WHETHER OR NOT THEY WOULD AGREE TO GO IF PRESSED.

COMMENT

15. (C) AFTER FORCING CHIEF JUSTICE GUBBAY INTO EARLY RETIREMENT ON FEBRUARY 2 (REFTEL), THE GOVERNMENT IS NOW INTIMIDATING HIS COLLEAGUES INTO STEPPING DOWN AS WELL. THE DEPARTURE OF ALL THREE JUDGES (TWO WHITE AND ONE OF ASIAN HERITAGE) WOULD KNOCK OUT 60 PERCENT OF THE SUPREME COURT IN A SEVEN-DAY PERIOD. MCNALLY, WHO OPPOSED THE IAN SMITH REGIME AND HAS SERVED ON THE SUPREME COURT SINCE 1984, CLEARLY RESENTED THE GOVERNMENT'S PRESSURE, BUT ENSURING HIS PERSONAL SAFETY AND THAT OF HIS FAMILY, ALONG WITH THE NEED TO PRESERVE HIS FINANCIAL SECURITY IN RETIREMENT, PROVIDE COMPELLING REASONS TO GO. THESE DEPARTURES, HOWEVER, DRIVE THE STAKE FURTHER INTO THE HEART OF THE RULE OF LAW HERE, AND REMOVES THE ONLY GENUINE CHECK

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C O N F I D E N T I A L SECTION 02 OF 02 HARARE 000694

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SUBJECT: ANOTHER SUPREME COURT JUSTICE IS SHOWN THE DOOR

ON A PRESIDENT DETERMINED TO RETAIN POWER AT ALL AND ANY COSTS. END COMMENT.

IRVING

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